HARDIAL SINGH SEKHON

v.

PEGUAM NEGARA

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
AHMAD FAIRUZ JCA
MOKHTAR SIDIN JCA
[CRIMINAL APPEAL NO: N-05-77-96]
6 JANUARY 1999

CRIMINAL PROCEDURE: *Appeal - Judgments and orders - Setting aside - Application to set aside order of High Court - Whether to be made to High Court - Whether can be made to Court of Appeal*

The applicant had appealed against the decision of the Rawang Magistrate for refusing to entertain his complaint under s. 133 Criminal Procedure Code. The appeal was dismissed by the Shah Alam High Court, and following that, the said court issued an order prohibiting the applicant from instituting any legal proceedings in any court save by leave of a judge. The applicant contended that the prohibition order was a 'nullity order', and so applied by notice of motion to the Court of Appeal to have it set aside. Consequently, a question arose as to whether the motion was improperly laid before the appellate court, and if so, whether, rightly, the applicant ought to have made the application to the court that issued the order.

Held:
Per Ahmad Fairuz JCA

[1] The application should have been made in the High Court at Shah Alam or any High Court in Malaya. The affidavit in support of the applicant's motion did not show that the applicant had made such applications in any of the High Courts.

[2] Further, there is no provision in the Courts of Judicature Act 1964 or its rules that entitle the applicant to make such applications before the present court.

[Notice of motion dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Melalui perintah bertarikh 12 Oktober 1990, Mahkamah Tinggi Shah Alam telah membuat perintah melarang pemohon dari memulakan tindakan undang-undang di mana-mana mahkamah kecuali jika ianya dibenarkan oleh seorang hakim. Pemohon mengatakan bahawa perintah tersebut adalah satu 'perintah batal', dan memohon kepada Mahkamah Rayuan melalui notis usul untuk mengketepikan perintah tersebut. Di hadapan hakim-hakim rayuan yang bijaksana, persoalan telah timbul samada permohonan di sini telah dikemukakan dengan salahnya ke Mahkamah Rayuan, dan samada, cara yang betul ialah dengan pemohon membuat permohonan ke mahkamah yang mengeluarkan perintah tersebut.

Diputuskan:
Oleh Ahmad Fairuz HMR

[1] Permohonan di sini sepatutnya dibuat di Mahkamah Tinggi Shah Alam atau di mana-mana Mahkamah Tinggi Malaya. Afidavit yang menyokong usul pemohon tidak menunjukkan bahawa pemohon telah membuat permohonan sedemikian di mana-mana Mahkamah Tinggi.

[2] Lagipun, tidak ada peruntukan dalam Akta Mahkamah Kehakiman 1964 ataupun peraturan-peraturannya yang memberi hak kepada pemohon untuk membuat permohonan sepertinya di mahkamah ini.

[Notis usul ditolak.]

Cases referred to:
In Re Boaler [1914] vol 83 KBD 1629 ***(refd)***
United Asian Bank Bhd v. Elgi Marka Sdn Bhd [1995] 1 CLJ 407 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, item 17
Criminal Procedure Code, s. 133
Penal Code, ss. 406, 418

For the appellant - Hardial Singh Sekhon
For the respondent - Kamaruzaman Abd Jalil DPP

[Appeal from High Court, Seremban; Criminal Trial No: 44-7-96]

Reported by WA Sharif

JUDGMENT

Ahmad Fairuz JCA:

The appellant/applicant, Hardial Singh Sekhon, had applied in the High Court at Seremban for leave to file a complaint with a magistrate regarding offences under s. 406 and 418 of the Penal Code allegedly committed by one Au Seak Chow. The application for leave was required by the Shah Alam High Court order of 12 October 1990 which prohibited the applicant from instituting any legal proceedings in any court save by leave of a judge. After hearing the parties, the High Court at Seremban dismissed the applicant's application. The applicant appealed against the said decision. When the appeal came up for hearing before us, the applicant requested that he be heard on his notice of motion dated 14 September 1998. By this motion, the applicant sought to set aside the Shah Alam High Court order of 12 October 1990 and to fix a date for the hearing of the appeal.

Prior to the order of 12 October 1990, the applicant made a complaint to the Rawang magistrate under s. 133 of the Criminal Procedure Code. Through that complaint the applicant asked for the sixty respondents (which include the Minister of Finance and the Attorney-General) to be prosecuted. The magistrate dismissed the complaint. The applicant appealed against that decision. That appeal was disposed of together with the applicant's application for an order for "suspension and interdict" *(sic)* against the respondents (the Attorney-General by his personal name and MDC Sdn. Bhd.). Both the appeal and the application were dismissed by the Shah Alam High Court on 12 October 1990. It was at this juncture that the learned judge proceeded to act under item 17 of the Schedule to the Courts of Judicature Act 1964 and made the order which the applicant now seeks to set aside. That order was, according to the applicant, a "nullity order". As such, the applicant was of the view that he could either ignore the order or go to court and get it set aside. For this view, the applicant referred us to the case of *United Asian Bank Bhd. v. Elgi Marka Sdn. Bhd.* [1995] 1 CLJ 407; [1995] 1 MLJ 301. What is clear from this case is that the application to set aside a High Court order, which also was a nullity order, was made to the High Court that issued the order.

The applicant also referred us to the case of *In Re Boaler* [1914] vol. 83 KBD 1629 which according to him supports his right to have the order of 12 October 1990 set aside. The order sought to be set aside *In Re Boaler's* case was an order made by a Divisional Court. The application to set aside that order was also made to the Divisional Court.

Bearing in mind these two aforementioned cases, we came to the view that this application should therefore have been made in the High Court at Shah Alam or any High Court in Malaya. The affidavit in support of the applicant's motion did not show that the applicant had made such applications in any of the aforementioned High Court. We were also unable to find any provisions in the Courts of Judicature Act 1964 or its rules that entitle the applicant to make such application before us. As such the applicant's notice of motion had to be dismissed.

As regards the appeal before us, the applicant requested for another date for the hearing of the appeal as he was under the wrong impression that the appeal had not been fixed for hearing yet. We accordingly directed that the appeal be taken off the hearing list.